

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COLUMBIA UNIVERSITY
PATENT LITIGATION

MDL No. 1592 (MLW)

This Document Relates To All Actions

DECLARATION OF DAVID I. GINDLER

I, David I. Gindler, declare as follows:

1. I am a partner at the law firm of Irell & Manella LLP and counsel of record for The Trustees of Columbia University in the City of New York ("Columbia"). I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.
2. Attached as Exhibit A is a true and correct copy of the Supplemental Information Disclosure Statement filed by Columbia on April 17, 2002, to support its U.S. Patent Application No. 08/484,136 ("the '136 application"). Item number two on Exhibit A to the Statement lists U.S. Patent Application No. 08/477,159 (the "'159 application").
3. Attached as Exhibit B is a true and correct copy of U.S. Patent No. 6,455,275 (the "'275 patent"), assigned to Columbia, which issued from the '136 application.
4. The '275 patent and the '159 application both claim priority to the same original patent application, U.S. Patent Application No. 06/124,513.
5. Attached as Exhibit C is a true and correct copy of a letter dated May 27, 2004, from Jason Sheasby (counsel for Columbia) to Claire Laporte (counsel for Biogen, Inc. and Genzyme Corp.).
6. Attached as Exhibit D is a true and correct copy of a letter dated May 28, 2004 from Jason Sheasby to counsel for all plaintiffs in each action that is part of *In re*

Columbia University Patent Litigation, MDL No. 1592, other than counsel for Biogen and Genzyme.

7. Attached as Exhibit E is a true and correct copy of a letter dated May 28, 2004, from Claire Laporte to Jason Sheasby and myself.

8. Attached as Exhibit F is a true and correct copy of a letter dated June 1, 2004 from Jason Sheasby to Claire Laporte.

9. Attached as Exhibit G is a true and correct copy of a letter dated June 4, 2004, from Claire Laporte to Jason Sheasby and myself.

10. Attached as Exhibit H is a true and correct copy of a letter dated June 7, 2004, from Steven A. Zalesin (counsel for Johnson & Johnson) to Jason Sheasby.

11. Attached as Exhibit I is a true and correct copy of a letter dated June 1, 2004 from Kevin Rosen (counsel for Columbia) to Arthur Wineburg (counsel for Amgen, Inc. and Immunex Corp.).

12. Attached as Exhibit J is a true and correct copy of a November 19, 2002 request by Michael D. Linton filed with the Patent and Trademark Office (“PTO”) to access the file record of the ’159 application.

13. Attached as Exhibit K is a true and correct copy of an email received by Columbia’s counsel Cooper & Dunham LLP from Jay Lucas of the PTO.

14. The ’159 application has not issued as a patent nor been published as a statutory invention registration.

15. The ’159 application is not a 35 U.S.C. § 122(b) published abandoned application.

16. The ’159 application is not a 35 U.S.C. § 122(b) published pending application.

17. The ’159 application is not an unpublished abandoned application.

18. No other patent or application claims the benefit of the ’159 application under 35 U.S.C. §§ 119(e), 120, 121 or 365.

19. Columbia has not granted Biogen and Genzyme (or any third party) authority to inspect the portions of the '159 application disclosed in the Reply.

20. Attached as Exhibit L is a true and correct copy of a letter dated June 9, 2004 from Robert Stone (counsel for Genentech) to Jason Sheasby.

21. Columbia's counsel Cooper & Dunham LLP has requested that the PTO initiate an investigation regarding the release of the '159 application's confidential prosecution history.

Executed on June 10, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ David I. Gindler

David I. Gindler